

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

JASON LEE VAN DYKE  
Plaintiff

v.

THOMAS CHRISTOPHER RETZLAFF  
a/k/a Dean Anderson d/b/a BV Files, Via  
View Files L.L.C., and ViaView Files  
Defendant

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Case No. 4:18cv247

**ORDER**

After considering Defendant's Motion to Dismiss pursuant to the Texas Citizen's Participation Act ("TCPA") together with Plaintiff's response, the pleadings, the affidavits, and the other evidence in support of the same, the Court makes the following findings of fact:

- (1) The Texas Citizen's Participation Act is a procedural device that directly conflicts with Rule 12(d) of the Federal Rules of Civil Procedure, the inherent authority of this Court to manage its own dockets, and this Court's discretion over whether to hold an oral hearing concerning a motion before it;
- (2) The evidentiary burden imposed on a non-movant by the TCPA directly conflicts with the evidentiary standards applicable in federal court;
- (3) Even if the TCPA was applicable in federal court, Defendant has failed to meet his burden of proof that the speech complained of by Plaintiff in his Second Amended Complaint is the type protected by the TCPA, that is, speech on a matter of public concern;
- (4) Even if the TCPA was applicable in federal court, and even if Defendant had met his burden of proof under the TCPA, there is sufficient evidence before the Court to demonstrate that Plaintiff can make a prima facie case on his claims against Defendant for tortious interference with a contract, intrusion on seclusion, and libel;

It is accordingly ORDERED that Defendant's Motion to Dismiss under the Texas Citizens Participation Act is denied. It is FURTHER ORDERED that Defendant is prohibited from filing an interlocutory appeal of this order. All relief not specifically granted in this order with respect to Defendant's Motion to Dismiss under the TCPA and Plaintiff's response to the same is, by this order, DENIED.